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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/071,732	02/07/2002	Alexander Gelbman	VTW-007	2975

959 7590 06/02/2005

LAHIVE & COCKFIELD, LLP.  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER
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CHOW, DOON Y

ART UNIT	PAPER NUMBER
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2675

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/071,732

Applicant(s)

GELBMAN, ALEXANDER

Examiner

Dennis-Doon Chow

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 28-40, 42-45, 48 and 49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-40, 42-45, 48 and 49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ✓ 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 34-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/393,553. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims are broader than the claims of copending Application ('553).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

3. Claims 34-39 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending Application No. 09/760,363. Although the conflicting claims are not identical, they are

not patentably distinct from each other because the present claims are broader than the claims of copending Application ('363).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 28-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. (6639578) and Giordano (5715622).

Regarding to claims 28-30 and 33-39, Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a bi-stable non-volatile imaging material; one or more power antennas (Col. 14, lines 10-34); a remote activator module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; a radio transducer; color display regions; and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), solar cell, and rechargeable storage means.

Comiskey further discloses display label system is used in a store or a supermarket (col. 15, line 1). Comiskey differs from the claims in that Comiskey does not explicitly disclose receiving and sending information relate to items on a shelf.

Giordano, in the same display field, discloses mounting a display module on a shelf for displaying information relate to items on the shelf. The display module comprises an antenna for receiving and sending the information relate to the items on the shelf. The antenna is mechanically connected to the shelf.

In light of the Giordano, it would have been obvious to one of ordinary skill in the art to use Comiskey's electronic display label to receive, send, and display information relate to items on a shelf. This would have been obvious because Giordano teaches using a remote control electronic display label for receiving, sending, and displaying information relate to items on a shelf is well known in the art.

Regarding to claims 31-32, Comiskey further disclose any other electromagnetic signals can be used (col. 4, lines 50-51). Therefore, a well known inductive power and capacitive coupling obviously can be used in Comiskey's system instead of the radio signal.

6. Claims 40 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comiskey et al. (6639578) in view of Hobson et al. (5445906).

Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a bi-stable non-volatile imaging material; one or more power antennas (Col. 14, lines 10-34); a remote activator

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module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; a radio transducer; color display regions; and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), and solar cell.

Comiskey does not explicitly disclose the thin film battery is a rechargeable thin film battery.

Hobson discloses a conventional rechargeable thin film battery.

Since Comiskey further discloses the power source can be any conventional battery (col. 7, lines 53-53; col. 8, line 7), it would have been obvious to one ordinary skill in the art to use Hobson's rechargeable thin film battery in Comiskey's display label system.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting

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directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 48-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Comiskey et al. (6639578).

Comiskey discloses an electronic display label system suitable for displaying information, the system comprising: a flexible display having a bi-stable non-volatile imaging material; one or more power antennas (Col. 14, lines 10-34); a remote activator module in electronic communication with the electronic label (Figs. 2 and 6); a processor for determining the information to be display by the display assembly; a storage element for storing instruction to executed by the processor; a radio transducer; color display regions; and a power source including the power antennas, a battery, a thin film battery (col. 15, line 62), solar cell, and rechargeable storage means. Comiskey further discloses display label system can be used in a supermarket (col. 15, lines line 1). Comiskey further discloses a circuitry for decoding frequency information (col. 14, lines 55-61). The circuitry and a display layer are sacked together to form a stacked electronic label (see Fig. 8E).

### ***Response to Arguments***

9. Applicant's arguments filed 11/19/04 have been fully considered but they are not persuasive.

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Applicant's argument with regarding to a radio frequency identification layer **transmits** data information is irrelevant because the claims do not require such limitations. As indicated in the above rejection, Comiskey teaches the claimed radio frequency identification layer because Comiskey teaches a circuitry for decoding frequency information (col. 14, lines 55-61).

### ***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.



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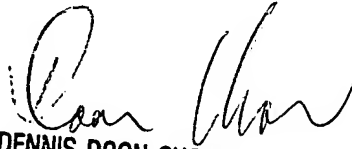
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis-Doon Chow whose telephone number is 571-272-7767. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sumati Lefkowitz can be reached on 571-272-3638. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dennis-Doon Chow  
Primary Examiner  
Art Unit 2675

D. Chow  
May 23, 2005



DENNIS-DOON CHOW  
PRIMARY EXAMINER